

**FOURTH AMENDMENT TO
MASTER AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF SAN JOSE
AND
JEFFERSON WELLS INTERNATIONAL, INC.**

This FOURTH AMENDMENT TO AGREEMENT is entered into this ____ day of _____, 2011, by the CITY OF SAN JOSE ("CITY"), a municipal corporation, and JEFFERSON WELLS INTERNATIONAL, INC., a Delaware corporation authorized to do business in the state of California ("CONSULTANT").

RECITALS

WHEREAS, on May 1, 2007, CITY and CONSULTANT entered into an agreement entitled "Master Agreement for Consultant Services between the City of San Jose and Jefferson Wells International, Inc." ("AGREEMENT"); and

WHEREAS, on April 13, 2009, CITY and CONSULTANT entered into a First Amendment to the AGREEMENT to allow for changes in CONSULTANT Personnel to be made in Task Orders; and

WHEREAS, on December 17, 2010, CITY and CONSULTANT entered into a Second Amendment to the AGREEMENT to extend the term for six months with no increase in total compensation; and

WHEREAS, on June 14, 2011, CITY and CONSULTANT entered into a Third Amendment to the AGREEMENT to extend the term, increase the amount of total compensation and update the Notice Section; and

WHEREAS, CITY and CONSULTANT desire to further amend the amended AGREEMENT to extend the term and increase the amount of total compensation;

NOW, THEREFORE, the parties agree to further amend the amended AGREEMENT as follows:

SECTION 1. SECTION 2, "TERM OF AGREEMENT" is amended to read as follows:

"The term of this AGREEMENT shall be from the date of execution of this AGREEMENT to December 31, 2012, inclusive, subject to the provisions of Section 11 of this AGREEMENT."

SECTION 2. SECTION 4, "COMPENSATION" is amended to read as follows:

"The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed Seven Hundred Thousand Dollars (\$700,000.00). The rate and schedule of payment is set out in THIRD REVISED EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein."

SECTION 3. EXHIBIT C, "SCHEDULE OF PERFORMANCE" is amended to read as shown in SECOND REVISED EXHIBIT C, attached and incorporated into this Fourth Amendment.

SECTION 4. EXHIBIT D, "COMPENSATION" is amended to read as shown in THIRD REVISED EXHIBIT D, attached and incorporated into this Fourth Amendment.

SECTION 5. All of the terms and conditions of the amended AGREEMENT not modified by this Fourth Amendment shall remain in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal
corporation

KEVIN FISHER
Sr. Deputy City Attorney

By _____
DENNIS D. HAWKINS, CMC
City Clerk

“CONSULTANT”

JEFFERSON WELLS INTERNATIONAL,
INC., a Delaware corporation

By _____
Name:
Title:

SECOND REVISED EXHIBIT C
SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT.

The estimated time for completion is December 31, 2012.

THIRD REVISED EXHIBIT D

COMPENSATION

CITY agrees to compensate CONSULTANT at the hourly rates listed below for professional services performed in accordance with the terms and conditions of this AGREEMENT.

Name and Title of Person	% age of time assigned to project	Calendar Year 2007 Hourly Rate (\$/hr.)	Calendar Year 2008 Hourly Rate (\$/hr)	Calendar Year 2009 Hourly Rate (\$/hr)	Calendar Year 2010 Hourly Rate (\$/hr.)	Calendar Year 2011 Hourly Rate (\$/hr.)	Calendar Year 2012 Hourly Rate (\$/hr.)
John M. Croy Director Construction Audit Services	20%	\$220.00	\$225.50	\$231.90	\$234.89	\$239.59	\$244.93
Jeffrey Pollard Director Construction Audit Services	As required	\$220.00	\$225.50	\$231.90	\$234.89	\$239.59	\$244.93
Ray Romero Director Construction Audit Services	As required	\$220.00	\$225.50	\$231.90	\$234.89	\$239.59	\$244.93
Other Director Construction Audit Services	As required	\$220.00	\$225.50	\$231.90	\$234.89	\$239.59	\$244.93
Paul Chavez Construction Audit Professional	40%	\$145.00	\$148.63	\$152.85	\$154.82	\$157.92	\$161.44
Fred Punsalan Construction Audit Professional	40%	\$145.00	\$148.63	\$152.85	\$154.82	\$157.92	\$161.44

Kevin Burke Construction Audit Professional	Alternate, as required	\$145.00	\$148.63	\$152.85	\$154.82	\$157.92	\$161.44
Other Construction Audit or Audit Professionals	As required	\$145.00	\$148.63	\$152.85	\$154.82	\$157.92	\$161.44

The hourly rates listed above shall be adjusted as of January 1, 2009 and each January 1 during the term of the AGREEMENT, according to the following provisions:

- A. The Base Figure for computing the adjustment shall be the Employment Cost Index ("ECI") (Seasonally Adjusted) for Private Industry Workers (all workers), as published by the Bureau of Labor Statistics of the U.S. Department of Labor for September 2007.
- B. The Index Figure for January 1, 2009 and each January 1 during the term of this AGREEMENT shall be the ECI (Seasonally Adjusted) for Private Industry Workers (all workers) as published by the Bureau of Labor Statistics of the U.S. Department of Labor for the immediately preceding September. For example, for January 1, 2009, the Index Figure shall be the ECI for September 2008.
- C. January 1, 2009 and each January 1 during the term of this AGREEMENT, if the Index Figure has increased over the Base Figure, the hourly rate payable for that calendar year shall be determined by calculating the percentage increase of the Index Figure over the Base Figure. For example, assuming the Base Figure is 110 and the Index Figure is 121, the percentage to be applied is $121/110=110\%$.
- D. Regardless of any year-to-year or cumulative decrease in the ECI during the Term of this AGREEMENT, in no event shall the hourly rates effective for any

calendar year be less than the hourly rates for the immediately preceding calendar year. In the event that :

- i. a year-to-year or cumulative decrease occurs in the ECI during the Term of this AGREEMENT; and
 - ii. the application of the formula set out above would result in hourly rates that are less than the hourly rates for the immediately preceding calendar year;
 - iii. the hourly rates shall remain unchanged for the calendar year.
- E. The ECI shall be the one reported in the Bureau of Labor Statistics of the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If the above-described ECI is no longer published, another index generally recognized as authoritative shall be substituted by the Director. These hourly rates, adjusted annually, are valid for the term of this AGREEMENT unless changed by written amendment.

Maximum Compensation:

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed Seven Hundred Thousand Dollars (\$700,000.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Reimbursable Expenses:

Air (coach class) and surface travel, lodging and meals of CONSULTANT employees traveling away from their base offices in connection with this AGREEMENT, if such costs are approved in advance in writing by the Director or the Director's authorized

designee. Each Task Order will specify the maximum amount of expenses for which CITY will reimburse the CONSULTANT. Expenses will be reimbursed at actual cost. Any expenses the CONSULTANT incurs beyond the specified maximum amount is at no cost to the CITY.

Invoice:

Every month the CONSULTANT shall invoice the CITY for work performed during the immediately previous month. The monthly invoice shall set forth for the relevant invoice period, a detailed description of the work completed, the number of hours worked and the applicable hourly rates, a detailed description of the reimbursable expenses incurred and the amount of such expenses, and documents supporting the reimbursable expenses. The invoice shall also show the total to be paid for the invoice period, the aggregate amount of payments received to date under the Task Order and the balance of maximum compensation for remaining work on the Task Order.